

are not intended to promote any particular product or industry and not operated on a “commercial” basis.

(h) *Representative of the news media.* Representative of the news media is a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. “News” means information about current events or of current interest to the public. Examples of news media entities include television or radio station broadcasting to the public at large and publishers of periodicals when qualifying as disseminators of “news” who make their products available for purchase or subscription by the general public. Those examples are not all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services) alternative media would be included in this category. “Free-lance” journalists may be considered as working for a news organization if they can demonstrate a basis for expecting publication by that organization, even if not actually employed. Proof may be by publication contract, but naval activities may also look to the requester’s past publication record in making this determination. Representatives of the news media do not include private libraries, private repositories of Government records, or middlemen such as information vendors or data brokers.

(i) *All other requesters.* All other requesters refers to persons who do not qualify as an educational institution, non-commercial scientific institution, representative of the news media, or commercial use requester. An example is a nonprofit organization.

§ 701.42 Application.

(a) *Commercial requesters.* When records are requested for commercial use, fees shall be assessed to recover reasonable standard charges for document search, review, and duplication. Requesters must reasonably describe the records sought. When naval activities review a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters, are not

entitled to 2 hours of free search time and 100 free pages of reproduction of documents. However, fees totaling \$15 or less must be waived. Commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Because use of the requested material is the exclusive determining criteria, a commercial enterprise may make a request that is not for commercial use. It is also possible that a nonprofit organization could make a request for commercial use. Such situations must be addressed on a case-by-case basis.

(b) *Educational institution requesters.* When a request is made by an educational institution whose purpose is scholarly research fees shall be limited to reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records being sought and must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly research.

(c) *Non-commercial scientific institution requesters.* When the request is made by a non-commercial scientific institution whose purpose is scientific research fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records sought and must show that the request is being made under the auspices of a qualifying institution and that records are not sought for commercial use, but in furtherance of scientific research.

(d) *Representatives of the news media.* (1) When the request is made by a representative of the news media, fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages). Requesters must reasonably describe the records sought.

(2) Representatives of the news media must meet the criteria defined in paragraph (h) of § 701.41, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a

request that is for a commercial use. For example, a request by a newspaper for records relating to an investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of duplication alone (excluding charges for the first 100 pages).

(3) "Representative of the news media" does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data brokers.

(e) *All other requesters.* Naval activities shall charge requesters who do not fit into any of the above categories fees to recover the full direct cost of search and duplicating records, except the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of 5 U.S.C. 552a, which permit fees only for duplication. Naval activities are reminded that this category of requester may be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest.

§ 701.43 Fee restrictions.

(a) A naval activity may not charge fees if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. Except for requesters seeking documents for a commercial use, naval activities shall provide the first 2 hours of search time and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) involving 2 hours and 10 minutes of search time and 105 pages of documents, a naval activity would recover the cost of only ten minutes of search time and five pages of duplication. If this processing cost was equal to or less than the cost to the naval activity for billing the requester and processing the fee collected (i.e., \$15), no charges would result.

(b) Requesters are entitled to the first 2 hours of search and 100 pages of duplication without charge once per re-

quest. Consequently, if after completing its portion of a request, a naval activity, refers the request to another naval activity to act on their portion of the request, the referring naval activity shall inform the recipient of the amount of search time and duplication cost to date so the final Navy response will address all fees in the processing of the request. For referrals to other federal agencies or Department of Defense components, if the naval costs of processing the request are chargeable based on fee guidelines, the fees should be collected from the requester and the recipient of the referral advised of the fee status of the request. If the fees are not chargeable based on the fee guidelines, the recipient of the referral should be advised of the naval fees associated with the processing of the request.

(c) In determining the "cost of collecting a fee" consider administrative costs to the naval activity of receiving and recording a remittance, and processing the fee for deposit in the Treasury Department's special account. The Treasury's cost to handle such remittance is negligible and shall not be considered in a naval activity's determination.

(d) To determine cost, "pages" refers to standard size paper copies normally 8 1/2" x 11" or 11" x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printouts, meets the restriction.

(e) For computer searches, the first 2 free hours will be determined by the salary scale of the individual doing the computer search. For example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal \$24 (2 hours of equivalent search at the clerical level), computer costs in excess of that amount are chargeable as computer search time.

§ 701.44 Fee waivers.

(a) When the naval activity determines that waiver or reduction of fees is in the public interest, documents will be furnished without charge or at a reduced charge. It is in the public interest when furnishing the information